

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

STACI FITZPATRICK,	:	
	:	
Appellant	:	
	:	
v.	:	TTA No. 01-16
	:	
MCKEESPORT AREA SCHOOL	:	
DISTRICT,	:	
	:	
Appellee	:	

OPINION AND ORDER

Staci Fitzpatrick (“Ms. Fitzpatrick”) appeals to the Secretary of Education (“Secretary”) from the decision of the Board of School Directors (“Board”) of the McKeesport Area School District (“District”). Ms. Fitzpatrick avers that she was unlawfully demoted to the position of Assistant Principal.

FINDINGS OF FACT

1. Ms. Fitzpatrick was hired by the District on or about August 22, 1997 as a Math Specialist. N.T. at 15, F. Ex. 7, District Ex. 20.¹
2. In 2003, the District promoted Ms. Fitzpatrick to an Assistant Principal position. N.T. at 15, F. Ex. 7, District Ex. 20, Amended Petition for Appeal at 4.
3. In 2007, the District promoted Ms. Fitzpatrick to a Principal position. Ms. Fitzpatrick continued serving as a District Principal for more than a decade and through June 30, 2015. N.T. at 15-16, F. Ex. 7, District Ex. 20.
4. During her tenure with the District, Ms. Fitzpatrick served as Principal in several different District schools at the elementary and middle school level. *Id.*

¹ “N.T. ___” refers to Notes of Testimony recorded at the evidentiary hearing before the Board in this matter. Exhibits admitted into evidence at that hearing by Ms. Fitzpatrick and the District are referred to as. “F. Ex. ___” and “District Ex. ___.”

5. Early on in the 2014-15 school year, it was communicated to the District's Administration that \$2 million needed to be cut from its personnel budget. N.T. at 94.
6. As a result of these budgetary constraints, the Superintendent recommended that the District's complement be reduced by several positions and that Ms. Fitzpatrick's Principal position could be eliminated. N.T. at 89-94.
7. For the 2013-14 and 2014-15 school years in their entirety, Ms. Fitzpatrick was a Principal in Founders Hall serving Grade 6 only. Founders Hall is a District school comprised of Grades 6, 7 and 8. N.T. at 76-79, District Ex. 4, Amended Petition for Appeal at 5.
8. For the entire 2013-14 school year and the first six months of the 2014-15 school year, Founders Hall's Grade 6 and Ms. Fitzpatrick, the Principal, were located in a separate building (known as Founders Hall Annex) about two miles from the main Founders Hall building while renovations to the main building were completed. N.T. at 76-79.
9. For the entire 2013-14 school year and the first six months of the 2014-15 school year Founders Hall's Grades 7 and 8 were located in the Founders Hall main building along with its Principal, Karen Chapman. N.T. at 80-83.
10. Once the renovations were finished in early 2015, Ms. Fitzpatrick and Founders Hall's Grade 6 moved to the main Founders Hall building. Thereafter, the Founders Hall Annex closed, and Founders Hall (Grades 6, 7 and 8) was consolidated into one building. N.T. at 78-79.
11. Notwithstanding the building consolidation, Ms. Fitzpatrick and Ms. Chapman remained in Principal positions in Founders Hall for the remainder of the 2014-15

- school year to ensure continuity for the balance of the academic year. N.T. at 78-79. Ms. Chapman retired effective June 30, 2015. District Ex. 6, 7.
12. At its March 25, 2015 meeting, the Board eliminated Ms. Fitzpatrick's Principal position, effective June 30, 2015. District Ex. 10, 13.
 13. By letter dated April 23, 2015, Ms. Fitzpatrick was advised that her new assignment would be Assistant Principal in Founders Hall. Her appointment as Assistant Principal was effective July 1, 2015. District Ex. 15.
 14. Ms. Fitzpatrick's salary and benefits remained the same in her new assignment as Assistant Principal. District Ex. 15. She continued to hold the position of Assistant Principal in Founders Hall at all relevant times thereafter. *Id.*
 15. Ms. Fitzpatrick received her new assignment as Assistant Principal because she was certified for the position, and she was familiar with the majority of the students since she served as Principal serving Founder's Hall's Grade 6 for two years. N.T. 99, F. Ex. 1.
 16. Ms. Fitzpatrick's two positions at Founders Hall, Principal and Assistant Principal, each had job descriptions issued by the District. F. Ex 2. and F. Ex. 3, N.T. at 27-32.
 17. Ms. Fitzpatrick's actual duties were consistent with the District job description titled "Elementary Principal" when she served as Principal in Founders Hall and the job description titled "Assistant Middle School Principal" when she served as Assistant Principal in that school. F. Ex 2. and F. Ex. 3, N.T. at 27-32.
 18. These job descriptions indicated the following regarding Ms. Fitzpatrick's positions in Founders Hall during the time she held them:

- a. The Elementary Principal must possess “[p]ersonal qualities necessary to function as an instructional leader.” F. Ex. 2. The Assistant Principals “[a]ssist the associate² principal with the responsibility of being an educational leader.” F. Ex. 3.
- b. The Elementary Principal “[e]stablishes guidelines for proper student conduct and maintains student discipline.” F. Ex 2. The Assistant Principals “[a]ssist the associate principal with school discipline.” F. Ex. 3.
- c. The Elementary Principal uses “leadership, supervisory and administrative skills to promote the educational development of each student.” F. Ex 2. The Elementary Principal also “[s]upervises all professional, paraprofessional, administrative, and non-professional personnel attached to the school.” *Id.* The Assistant Principals “[a]ssist in the supervision and evaluation of all school staff as directed by the associate principal.” F. Ex 3.
- d. The Elementary Principal “[a]pproves the master teaching schedule and any special assignments.” F. Ex 2. The Assistant Principals “[a]ssist in the implementation of school schedules, teacher classroom assignments, teacher learning and daily building operation schedules.” F. Ex 3.
- e. The Elementary Principal “[a]ssumes responsibility for all official school correspondence and news releases.” F. Ex 2. The Assistant Principals “[a]ssist in notifying the Public Relations department of all school-wide events.” F. Ex 3.

² The “Associate Principal” position did not exist in Founders Hall when Ms. Fitzpatrick was a Principal for that school. After the 2015 building consolidation, the Associate Principal job titles replaced the several different position job titles used previously in Founders Hall for the position commonly known as “Principal.” District Ex. 10, 11, 13 and F. Ex 2, 3, 4.

- f. The Elementary Principal “[p]repares and submits the school’s budgetary requests and monitors expenditures of funds.” F. Ex 2. The Elementary Principal also “[c]ontrols the various funds generated by student activities.” *Id.* The Assistant Principals have no responsibilities specifically regarding school budgets or funding. F. Ex 3.
19. At its March 25, 2015 meeting, the Board appointed Paul Sebelia to the newly created and titled position at Founders Hall: “Associate Principal.” District Ex. 10, 11, 13.
20. As Assistant Principal, Ms. Fitzpatrick would report to Associate Principal Sebelia, who was the building leader. District Ex. 21, 23 and Renewed Motion to Dismiss at 2.
21. Previously, while Ms. Fitzpatrick was a Principal in Founders Hall, she was in a position superior to Mr. Sebelia, who then served as one of several Founders Hall Assistant Principals. As Assistant Principal, Ms. Fitzpatrick would be Mr. Sebelia’s subordinate. District Ex. 21, 23 and Renewed Motion to Dismiss at 2.
22. Ms. Fitzpatrick challenged her transfer to the position of Assistant Principal of Founders Hall, which she maintains was an unlawful demotion, and requested a hearing at the local level. The Board granted Ms. Fitzpatrick’s request for a hearing and, on October 6, 2015, a hearing was held before the Board.
23. On or about March 22, 2016, the Board adopted an adjudication, which found that the District’s Administration did not demote Ms. Fitzpatrick and did not act improperly or unlawfully in any way.
24. On or about April 22, 2016, Ms. Fitzpatrick filed Petition for Appeal with the Secretary challenging the Board’s adjudication.

25. On or about September 2, 2016, the Secretary requested that Ms. Fitzpatrick file a more specific pleading.
26. On or about September 21, 2016, Ms. Fitzpatrick complied with the Secretary's request and filed an Amended Petition for Appeal.
27. The Secretary appointed a hearing officer, and a hearing was held on November 14, 2016.

DISCUSSION

1. Ms. Fitzpatrick's reassignment to a Founders Hall Assistant Principal position was a demotion.

The Secretary has jurisdiction under Sections 1131 and 1151 of the School Code to hear an appeal of a school board action which results in the demotion of a professional employee. *Fox Chapel Area School Dist. v. Condran*, 468 A.2d 1175 (Pa. Cmwlth. 1983). Section 1131 provides: "In case the professional employe concerned considers himself or herself aggrieved by the action of the board of school directors, an appeal by petition, setting forth the grounds for such appeal, may be taken to the [Secretary]." 24 P.S. § 11-1131. Section 1151 provides: "There shall be no demotion of any professional employe either in salary or in type of position . . . without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe." 24 P.S. § 11-1151.

In demotion appeals before the Secretary, the professional employee has the burden of proving that a reassignment constituted a demotion which may be appealed to the Secretary, as opposed to a lateral transfer over which the Secretary has no jurisdiction. *Joyce v. Spring-Ford Area School Dist.*, 600 A.2d 1302 (Pa. Cmwlth. 1991). In these appeals, the Secretary is vested

with the authority to conduct *de novo* review whether he takes additional testimony or merely reviews the official record of the proceedings before the Board. The Secretary's review ensures that the requirements of due process are satisfied. *Katruska v. Bethlehem Center School Dist.*, 767 A.2d 1051, 1054 (Pa. 2001).

A demotion of a professional employee is a reassignment to a position which has less importance, dignity, authority, prestige or salary. *Department of Education v. Kauffman*, 343 A.2d 391 (Pa. Cmwlt. 1975). Commonwealth Court has opined that:

A demotion is, by its nature, relative. A change in the title of one's job may have no bearing on one's authority, prestige, or responsibility in any given organizational structure. It may be very difficult for persons outside the system to assess the 'pecking order' accurately. For this reason, in cases where a demotion in type of position is alleged, the reviewing body requires a complete record in which testimony as to the relative standing of the old and new positions in the hierarchy is developed. *Department of Education v. Charleroi Area School Dist.*, 347 A.2d 736, 738 (Pa. Cmwlt. 1975).

The court has emphasized the importance of developing a record before the Board so that the Secretary can make an informed evaluation of the circumstances surrounding the alleged demotion to determine whether the reassignment was to a subordinate position or a lateral move. *Walsh v. Sto-Rox School Dist.*, 532 A.2d 547, 548-549, (Pa. Cmwlt. 1987).

In the present matter which included a hearing before the Board, Ms. Fitzpatrick testified credibly that the District's job descriptions titled "Elementary Principal" and "Assistant Middle School Principal" were consistent with her actual duties as Principal and Assistant Principal, respectively, in Founders Hall. N.T. at 27-32; F. Ex. 2 and F. Ex. 3. According to these job descriptions, Ms. Fitzpatrick's position as Elementary Principal was an educational leadership position, while her position as Assistant Principal was not. For example, among the essential qualifications for the position of Elementary Principal listed in the job description are "Personal qualities necessary to function as an **instructional leader**." [Emphasis added]. The "job goal"

for the Elementary Principal position, according to the job description, is “**to use leadership**, supervisory, and administrative skills to promote the educational development of each student.”

F. Ex. 2. [Emphasis added].

To the contrary, the job description for Ms. Fitzpatrick’s Assistant Principal position states the “job goal” as follows: “To assist the associate principal in the supervision of staff school discipline, and in the daily operation of the school.” F. Ex. 3. Similarly, the “performance responsibilities” for the Assistant Principal position are as follows:

1. Assist in the implementation of school schedules, teacher classroom assignments, teacher learning and daily building operation schedules.
2. Assist the associate principal with the responsibility of being an educational leader for the school.
3. Assist the associate principal with school discipline.
4. Assist in the supervision and evaluation of all school staff as directed by the associate principal.
5. Assist in notifying the Public Relations department of all school-wide events.
6. Assist in the implementation of curriculum as directed.
7. Assist the associate principal in the coordination and organization of student data for the purpose of developing instructional strategies that will increase student achievement within the school.
8. Assist the associate principal in the daily operation of the school[.]
9. Maintain a neat and orderly atmosphere conducive to learning.
10. Assist in implementing programs of remediation.

F. Ex. 3.

If one compares the above-listed, lower-level duties of the Assistant Principal with the responsibilities for the Elementary Principal position, it is clear that the Elementary Principal is a higher-level position than the Assistant Principal. The Elementary Principal job description lists the following “performance responsibilities”:

1. Establishes and maintains an effective learning climate in the school.
2. Plans, organizes, and directs implementation of all school activities.
3. Makes recommendations concerning the school’s administration and instruction.
4. Prepares and submits the school’s budgetary requests and monitors expenditures of funds.
5. Prepares or supervises the preparation of reports, records, lists, and all other paperwork required or appropriate to the school’s administration.

6. Works with various members of the central administrative staff on school issues of more than in-school import, such as transportation, special services, and the like.
7. Keeps his supervisor informed of events and activities of an unusual nature as well as routine matters related to the supervisors' accountability.
8. Interprets and enforces district policies and administrative regulations.
9. Maintains professional relationships with students, parents, staff, and administration.
10. Leads in the development, implementation and monitoring of the instructional program.

F. Ex. 2.

According to the job descriptions of the two positions, the Elementary Principal position was far greater in authority, prestige, and responsibility than the Assistant Principal position. Essentially, the Elementary Principal is the educational leader and the Assistant Principal is the leader's subordinate and assistant.

The District changed its job titles in Founders Hall when it consolidated buildings in 2015. "Associate Principal" was a new position in Founders Hall, which was created when the District consolidated schools and reassigned Ms. Fitzpatrick to "Assistant Principal" in 2015. However, there is no persuasive evidence in the record to support a conclusion that the job title changes materially impacted the relative standing of the Principal and the Assistant Principal positions in Founders Hall.

The evidence shows that the position of "Assistant Principal" existed both before and after the consolidation and at all relevant times has been assigned lower-level duties than the building-level leadership position, which the District confusingly has called by different titles such as "Principal," "Associate Principal," "Elementary Principal," and "Head Principal." *See* F. Ex. 3, F. Ex. 2, F. Ex. 4, and District Ex. 27. There is no evidence in the record to support a conclusion that the any of these different job titles afforded to the position commonly known as "Principal" were equivalent to Ms. Fitzpatrick's position as Assistant Principal. Ms. Fitzpatrick's credible testimony and the respective job descriptions for these positions are

compelling evidence that Ms. Fitzpatrick was demoted when she was reassigned from a Principal position to an Assistant Principal position in Founders Hall.

In contrast, the District does not present any credible or persuasive evidence to support a conclusion that Ms. Fitzpatrick's reassignment was not a demotion. For example, Superintendent Rula Skezas testified on behalf of the District regarding the relative authority, prestige and responsibility of the Principal and Assistant Principal positions. When asked specifically whether, in her view, Ms. Fitzpatrick's position as Assistant Principal was "less prestigious" than her position as Principal, Skezas testified unpersuasively that "[t]he position could be as important as you want it to be." N.T. 139. The District's job descriptions and Ms. Fitzpatrick's credible testimony contradict Skezas' statement here and outweigh this notion advanced by Skezas that the authority, prestige and responsibility of the Assistant Principal position is whatever you want it to be. No matter how important one wanted the Assistant Principal to be, the position is limited by its job description which sets forth the terms of an Assistant Principal position with much less authority, prestige and responsibility than the former leadership position Ms. Fitzpatrick held as Principal. I discount the testimony of Skezas on this particular point as non-factual exaggeration.

I am also not convinced by the argument advanced by the District that because Ms. Fitzpatrick was responsible for fewer students as Principal than as Assistant Principal, she was not demoted. *See* Renewed Motion to Dismiss at 7. In my view, the number of students served is not a particularly important factor in the present matter. The fact that Ms. Fitzpatrick served one grade level as Principal and three grade levels as Assistant Principal is far less significant for the purpose of resolving the issue of whether she was demoted than the fact she had served Grade 6 in a leadership, role and is now serving Grades 6-8 as a subordinate assistant. The arguments presented by the District cannot overcome the compelling factual evidence set forth in

Ms. Fitzpatrick's credible testimony corroborated by the District's own job descriptions that support the inescapable conclusion that her Principal position in Founders Hall was far greater than her Assistant Principal position in terms of authority, prestige and responsibility, regardless of the whether the positions are serving one grade level or three. Based upon the evidence of record, there can be no question that Ms. Fitzpatrick's reassignment from Principal to Assistant Principal was a demotion.

2. Ms. Fitzpatrick's demotion to Assistant Principal was not arbitrary, discriminatory, or based upon improper considerations.

A school district possesses broad discretion in making personnel and administrative decisions that result in demotions, and a school board's decision is presumptively valid. *Green v. Jenkintown School Dist.*, 441 A.2d 816 (Pa. Cmwlth. 1982). A district's exercise of discretion in a demotion case should stand unless the demoted employee meets the heavy burden of proving that the demotion was arbitrary or based on discriminatory or improper considerations. *Williams v. Abington Sch. Dist.*, 397 A.2d 1282, 1283 (Pa. Cmwlth. 1979).

In this appeal, Ms. Fitzpatrick alleges that "her demotion was effected due to unlawful discrimination on the basis of her race, Black." Amended Petition for Appeal at 10. She also alleges that her demotion was founded upon improper considerations because, according to Ms. Fitzpatrick, the District refused to realign its staff "in such a way to protect those professional employees with the most continuous service" in violation of 24 P.S. § 1125.1. *Id.*

With regard to Ms. Fitzpatrick's claims of racial discrimination, the record is devoid of any persuasive or credible evidence to support a conclusion that the District unlawfully discriminated against her. Ms. Fitzpatrick advances the spurious notion that her discrimination claims lodged in the present matter as well as those she filed with the Equal Employment Opportunity Commission at Charge No. 553-2015-01120, conclusively demonstrate that

discrimination actually occurred here. In my opinion, these claims are entirely unsupported by factual information contained in the record before the Secretary. Ms. Fitzpatrick's discrimination claims are unproven, bald allegations—not facts upon which I could base a conclusion of unlawful conduct by an employer. Accordingly, I find that Ms. Fitzpatrick has failed to prove that the District has discriminated against her in violation of law.

With regard to Ms. Fitzpatrick's claim that she was demoted without consideration of her seniority in violation of 24 P.S. § 11-1125.1, the Secretary has previously held and the Commonwealth Court has affirmed that appellate jurisdiction over such matters lies exclusively within the province of the Courts Common Pleas and outside the jurisdiction of the Secretary. In considering this precise issue, Commonwealth Court has concluded that "the Secretary was correct in determining that it did not have jurisdiction over Petitioner's claim that the [District] failed to consider Petitioner's seniority with respect to Petitioner's demotion; appellate jurisdiction regarding these seniority issues lies with the Court of Common Pleas." *Piazza v. Millville Area School Dist.*, 624 A.2d 788, 791 (Pa. Cmwlth. 1993). Accordingly, the claim that the District failed to properly consider Ms. Fitzpatrick's seniority before demoting/reassigning her is dismissed for lack of jurisdiction.

3. A rational basis exists to demote Ms. Fitzpatrick.

Commonwealth Court has long held that any rational reason is sufficient to support the demotion of a professional employee. *Board of Public Education of the School Dist. of Pittsburgh v. Thomas*, 399 A.2d 1148, 1150 (Pa. Cmwlth. 1979). In the present matter, Superintendent Skezas credibly testified that (1) the District needed to cut \$2 million from its personnel budget in 2014-15 and (2) as a result of these budgetary constraints, she recommended a reduction in the District's complement and the elimination Ms. Fitzpatrick's Principal position. N.T. 89-94. Skezas further credibly testified that Ms. Fitzpatrick was demoted to Assistant

Principal in Founders Hall because she was certified for the position and was familiar with the majority of Founders Hall's students at the time since she served as Principal of Grade 6 in that school for two academic years. N.T. at 99.

I find that the testimony of Skezas is credible regarding the reasons for Ms. Fitzpatrick's demotion and conclude that the District had rational reasons to demote her. The Supreme Court of Pennsylvania has opined that the elimination of a professional employee's position resulting in demotion should be upheld "if arrived at after a consideration of the educational needs of the school district rather than on any arbitrary or improper basis[.]" *Smith v. School Dist. of the Township of Darby*, 130 A.2d 661 (Pa. 1957). I find that the District legitimately and lawfully eliminated Ms. Fitzpatrick's Principal position based upon educational needs and demoted her for reasons which were neither arbitrary, improper nor discriminatory. Accordingly, I affirm the District's demotion of Ms. Fitzpatrick and issue the following order.

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

STACI FITZPATRICK, :
Appellant :
v. : TTA No. 01-16
: :
MCKEESPORT AREA SCHOOL :
DISTRICT, :
Appellee :

ORDER

AND NOW, this 6th day of January 2017, it is hereby **ORDERED** that because Staci Fitzpatrick failed to meet her burden of proving that her demotion was arbitrary, discriminatory or founded upon improper considerations, her appeal is **DISMISSED**. The McKeesport Area School District's decision to demote Ms. Fitzpatrick is hereby **AFFIRMED**.



Pedro A. Rivera
Secretary of Education

Date mailed: January 6, 2017